

**REMARKS**

Entry of this Amendment and reconsideration are respectfully requested in view of the amendments made to the claims and for the remarks made herein.

Claims 1-15 are pending and stand rejected.

Claims 1, 4, 7, 8, 11-14 and 15 have been amended.

Claims 11-13 stand rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter.

Applicant respectfully disagrees with and explicitly traverses the reason for rejecting the claims. In the interest of advancing the prosecution of this matter, the claims have been amended as suggested by the Examiner.

Having amended the claims as suggested, applicant submits that the reason for the rejection has been overcome. Applicant respectfully requests that the rejection be withdrawn.

Claims 1-15 stand rejected under 35 USC 112, first paragraph, as failing to comply with the written description. The Office Action states that "the Specification does not provide support for the ... feature 'wherein a threshold is provided to determine whether an 8x8 DCT block is encoded at the first high level ... or the second lower level ... without varying an encoding rate' (see page 3, lines 6-10). The Office Action further states that "while a threshold is used to classify the DCT blocks as either foreground or background ... no threshold is used for determining whether a block ... is to be encoded at the first high level ... or the second lower level ... and there is no teaching within the Specification for 'without varying an encoding rate of the second lower level ... to accommodate an encoding rate of the first high level...'"

Applicant respectfully disagrees with and explicitly traverses the reason for rejecting the claims. However, in the interest of advancing the prosecution of this matter, the independent claims have been amended to more clearly state the invention. More specifically, the claims have been amended to recite "wherein an encoding rate of the second lower level of quantization is not varied to accommodate an encoding rate of the first high level." No new matter has been added. Support for the amendment may be found at least on page 3, lines 10-12, which state "[t]he foreground pixels are then

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transmitted at the higher bit rate while the background pixels are transmitted at the lower rate."

Having amended the claims to more clearly state the invention, applicant submits that the reason for the rejection has been overcome. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

Claim 15 stand rejected under 35 USC 103(a) as being unpatentable over Stenger (DE 3608489A1) in view of Katata (USP no. 5,815,601) and Vogel (USP no. 5,412,431).

The Office Action states that Stenger teaches a method of improving image segmentation using substantially the same apparatus for processing a stereo pair but fails to disclose (a) a processor to extract foreground information and to encode foreground information at a first high rate and to encode background information at a second level and (b) wherein a threshold is provided to determine whether a block is encoded at the first high level or the second lower level. The Office Action further states that with regard to (a) Katata discloses a image encoder and teaches the conventional use of a DCT block transformer for providing foreground DCT blocks encoded at a first high level and background blocks at a second lower level. The Office Action further states that with regard to (b) Vogel teaches a device for controlling the quantizer and the conventional use of a threshold value  $L_{max}$  for determining fine or coarse quantization.

Applicant respectfully disagrees with and explicitly traverses the reason for rejecting the claims.

With regard to the Stenger reference, applicant would note that the Stenger reference is provided in the German language and no English translation has been provided of the sections of the Stenger reference referred-to in the Office Action. Hence, applicant is not in a position to comment on the reference itself but will agree with the statements made that Stenger fails to teach or suggest the items (a) and (b) referred-to above.

Katata discloses an image encoder for encoding the image data so as to make the image quality of a selected area better than that of the other areas without increasing the amount of data. The encoder comprises an area selecting section for selecting a specific area in an image and performing control so that the image quality of the area is encoded

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more preferably than the image quality of the other areas (see Abstract). Katata further discloses that "[i]n the case of the encoder of this embodiment, a specific area is selected from an original image inputted from the area selecting selection 101 and the position data and shape data of the selected area are encoded by the area position and shape encoding area" (see col. 5, lines 5-9). Katata further teaches selection of a specific area with regard to Figures 3-13 and describe in col. 5, line 53-col. 7, line 64 of the selection of the quantization step size (col. 7, lines 49-52). However, Katata fails to teach or suggest using a threshold value to distinguish between a foreground and a background image.

Vogel teaches a system wherein when data is recognized as being associated with the background of a scene, this data is transmitted with a high accuracy whereas data of the subsequent video pictures associated with the same background are not transmitted at all (see Abstract). Vogel more specifically teaches that "equivalent macroblocks (more generally data block) of two consecutive video pictures are checked on conformity. If two data blocks correspond within predetermined tolerance limits, a background index, or integer L, is increased by one unit. This check is repeated with the equivalent data blocks of the second and third video pictures and the background index L is increased by a finer unit in the case of conformity ... If the background index L ... reaches a predetermined threshold level Lmax, the associated picture section is treated as a background. This means that representative data [sic] for this picture section are transmitted with high precision and in that subsequently no data blocks different from zero are transmitted as long as the background index remains above the value Lmax." (see col. 3, lines 5-27). Hence, Vogel teaches a system for comparing images between consecutive images and when the index L exceeds a threshold, the first image is transmitted in a fine detail and the background in subsequent images is not transmitted at all. Vogel fails to teach or suggest a threshold used to distinguish whether a block within an image is to be encoded at a first level or a second level.

A claimed invention is prima facie obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference

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or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

In this case, the combination of Stenger, Katata and Vogel is deficient in reciting a material element of the invention recited in claim 15. Hence, even if there were some motivation to combine the teachings of the cited reference, which applicant believes does not exist and need not discuss herein, the combined device of Stenger, Katata and Vogel fails to teach all the features recited in independent claim 15. As shown, Vogel fails to teach using a threshold to distinguish between a foreground and background image.

Accordingly, the invention recited in claim 15 is not rendered obvious by the teachings of the cited references, as the combined device fails to recite all the elements claimed.

For at least this reason, applicant submits that the reason for the rejection has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claim.

Claim 1-14 stand rejected under 35 USC 103(a) as being unpatentable over Stenger (DE 3608489A1) in view of Katata (USP no. 5,815,601 and Vogel (USP no. 5,412,431) and further in view of Monro (USP no. 6,078,619) and Chun (USP no. 6,038,258).

The Office Action states that Stenger, Katata and Vogel does not particularly disclose (a) wherein at least a majority of a bandwidth is encoded at the first high quantization level and (b) wherein a contour of a participant whose image is at least of the stereo pair of images.

Applicant respectfully disagrees with and explicitly traverses the reason for rejecting the claims.

In this case, it has been shown that the combination of Stenger, Katata and Vogel is deficient in reciting a material element of the invention recited in claim 15, which discloses subject matter similar to the remaining independent claims. And, contrary to the statements made in the Office Action, neither Monro nor Chun provides any teaching or suggestion to correct the deficiency noted in the combination of Stenger, Katata and Vogel. Hence, even if there were some motivation to combine the teachings of the cited

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reference, which applicant believes does not exist and need not discuss herein, the combined device of Stenger, Katata, Vogel, Monro and Chun fails to teach all the features recited in the independent claims.

Accordingly, the inventions recited in the independent claims are not rendered obvious by the teachings of the cited reference as the combined device fails to recite all the elements claimed in independent claims.

For at least this reason, applicant submits that the reason for the rejection has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the independent claims.

The other claims in this application are each dependent from the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, individual consideration of the patentability of each on its own merits is respectfully requested.

Notwithstanding the arguments made herein, applicant submits that in the matter of obviousness, there is a great emphasis placed on "the importance of the motivation to combine." Yamanouchi Pharmaceutical Co. v. Danbury Pharmacal, Inc. 231 F. 3d. 1339, 56 USPQ2d. 1641, 1644 (Fed. Cir. 2000). More specifically, in the matter of obviousness, this court found that:

"an examiner ... may often find every element of a claimed invention in the prior art. If identification of each claimed element of the prior art was sufficient to negate patentability, very few patents would ever issue. Furthermore rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner ... to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention ... To counter this potential weakness in the obviousness construct, the suggestion to combine requirements stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness.

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*id. quoting In re Rouffet*, 149 F.3d 1350, 1357-58, 47 USPQ 2d 1453, 1457 (Fed. Cir. 1998)"

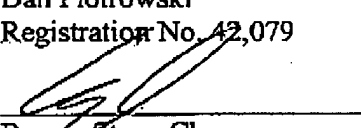
Rather than specifically referring to some motivation in the cited references to combine their teachings, the applicant believes that an impermissible use of the teachings of the instant application have been used as a blueprint to combine the teachings of the cited references without any suggestion or reason for such a combination. Applicant submits that because the Office Action has combined the teachings of three references to support the rejection of claim 15 and five references to support the rejection of the remaining independent claims, elements of each of the references were impermissible used to form a device which would include some of the elements of the invention claimed in the instant invention.

Accordingly, applicant submits that the Office Action has fails to show any motivation to combine the references cited and has merely pieced together aspects to each of the references to recite the elements claimed.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

Dan Piotrowski  
Registration No. 42,079

  
By: Steve Cha  
Attorney for Applicant  
Registration No. 44,069

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Mail all correspondence to:  
Dan Piotrowski, Registration No. 42,079  
US PHILIPS CORPORATION  
P.O. Box 3001  
Briarcliff Manor, NY 10510-8001  
Phone: (914) 333-9624  
Fax: (914) 332-0615